

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CLEMENT BOATENG,
Petitioner,

- against -

UNITED STATES OF AMERICA
Respondent.
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16 Cr. 710 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:


Presently before the Court is Petitioner Clement Boateng's motion pursuant to 28 U.S.C. § 2255, ECF No. 25, for a reduction of his sentence because of an alleged defect in the calculation of his criminal history score. The Court finds that Boateng's claim is procedurally barred because he has not shown cause for why he failed to challenge his sentence on direct appeal, nor has he shown that he is actually innocent of the crime of which he was convicted. *See De Jesus v. United States*, 161 F.3d 99, 102 (2d Cir. 1998) ("[I]f a petitioner fails to assert a claim on direct review, he is barred from raising the claim in a subsequent § 2255 proceeding unless he can establish both cause for the procedural default and actual prejudice resulting therefrom or that he is actually innocent of the crime of which he was convicted." (quotation omitted)). Moreover, Boateng's claim is wholly without merit because the applicable Sentencing Guidelines were calculated correctly. *United States v. Moore*, 916 F.3d 231, 240 (2d Cir. 2019) ("We hold that New York robbery in the third degree is categorically a crime of violence under the force clause of U.S.S.G. § 4B1.2(a)(1).").

For the foregoing reasons, Boateng's motion is **DENIED**. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal

from this order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438 (1962). The Clerk is directed to terminate the motion at ECF No. 25.

Dated: New York, New York
January 31, 2024

SO ORDERED


HONORABLE PAUL A. CROTTY
United States District Judge